IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1593 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NILESH M PANDYA - Petitioner(s)
Versus
STATE OF GUJARAT & 5 - Respondent(s)

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Appearance :

MR NILESH A PANDYA for Petitioner(s) : 1,
Ms. Maithily Mehta, AGP for Respondent(s) : 1,
MR DILIP B RANA for Respondent(s) : 2, 5,
None for Respondent(s) : 3, 6,
MR HS MUNSHAW for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 15/11/2006

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, order or

direction quashing and setting aside the impugned order dated 1.2.1997 passed by the Administrator of Chhani Nagar Panchayat. It is further prayed to pass appropriate order directing the respondents to reinstate the petitioner to his original post of Overseer with the respondent in pay-scale of Rs. 425-700 on ad-hoc payment of Rs. 500 per month with continuity of service and all other benefits.

2. It is the case on behalf of the petitioner that he was appointed as Overseer in the office of Nagar Panchayat, Chhani vide appointment letter dated 12.12.1991; he was given temporary appointment on the post of Overseer for the period from 13.12.1991 to 31.12.1991. It is further contended that he was appointed on the post of Overseer in the pay-scale of Rs. 425-700 and the said appointment was given in pursuance of the resolution dated 14.9.1997 passed by the State Government. It is submitted that inspite

of the Government Resolution dated 14.9.1997 the petitioner was appointed on temporary basis for 29 days and was not given any permanent appointment. It is submitted that though the petitioner was continued on 29 days basis no separate order was given to the petitioner but only artificial break was given to the petitioner. It is submitted that all of a sudden the services of the petitioner came to be terminated by the Administrator of Chhani Nagar Panchayat vide impugned order which is in breach of principles of natural justice.

3. Shri Nilesh Pandya, learned advocate appearing on behalf of the petitioner has vehemently submitted that appointment of the petitioner was sanctioned by the State Government and therefore the services of the petitioner should not have been terminated. When Shri Pandya was called upon to substantiate his claim that his appointment is sanctioned by the State

Government, initially he tried to justify it relying upon the Government Resolution dated 14.9.1997 and subsequent resolutions, however, when it was pointed out that by Government Resolution dated 14.9.1997 and subsequent resolutions, only the post of Overseer in the Chhani Nagar Panchayat was sanctioned, but not the appointment of the petitioner, as such Shri Pandya conceded that the post was sanctioned but not appointment of the petitioner. Thus, the appointment of the petitioner has not been sanctioned by any authority.

4. On going through the appointment order, it appears that the petitioner was appointed on temporary basis for 29 days and the petitioner might have continued subsequently. The appointment of the petitioner was not after following due procedure known to law and/or after selection. In the petition, nowhere it is submitted that the appointment of the petitioner

was after following due procedure of selection and after inviting the applications either from the Employment Exchange and/or from the public by giving advertisement in local newspapers inviting applications. Thus, the appointment of the petitioner is not in accordance with law and not after following due procedure of selection known to law. As held by the Hon'ble Supreme Court in the case of ***Municipal Council Vs. Surinder Kumar,*** reported in **[2006] 5 S.C.C. Page 173**, any appointment by the State made in violation of the recruitment rules as also in violation of the Constitutional scheme would be void in law and in such a case reinstatement is not warranted. Even in another case of ***Principal, Mehar Chand Polytechnic And Another vs. Anu Lamba And Others,*** reported in ***[2006] 7 S.C.C. Page 161***, the Hon'ble Supreme Court has, reiterated the above principle and has held that the object behind framing of recruitment rules is to provide equal opportunity to all citizens entitled for being considered for

recruitment to vacant posts, and if appointment on adhoc and/or temporary basis is made such appointees do not have right to be regularised in the public employment and they have no right to be continued in service.

5. Considering the above and the fact that the appointment of the petitioner was dehors the recruitment rules and/or without following any procedure of selection, and was initially appointed on temporary basis for 29 days, the petitioner is not entitled to any relief as his initial appointment itself is void.

6. For the reasons stated above, there is no substance in the present Special Civil Application and the same is required to be dismissed and is accordingly dismissed. Rule is discharged. Considering the fact that the learned advocate had tried to mislead this Court by submitting that the appointment of the

petitioner was sanctioned by the State Government, but the same was found to be incorrect, this Court proposed to impose some costs, however considering the request of the learned advocate appearing for the petitioner that the petitioner is out of service since 1997, this petition is dismissed without any cost.

[M.R. Shah, J.]

RMR.